

Statement from Kamran Zand Basiri

Is it true that the VBA has issued a suspension of my license.

As the investigation is ongoing I must allow the process of law to unfold as required, however, I do wish to add some general comments - buckle your seatbelts;

I'm sorry to group so many issues together, but I don't want to reduce complex issues into simple statements as it removes a lot of important information.

Laws made by government are accessible to the public so that citizens can see what government requires. In terms of the regulatory document which government applied into building regulation, have a quick peak the following webpage - <https://ncc.abcb.gov.au/ncc-online/How-it-works>

The above webpage is a friendly 'how it works' for this code which I think explains the operation well. This is the NCC (the National Construction Code); this document is adopted as building regulation containing construction requirements. You might notice the following statement; *"The key to the performance-based NCC is that **there is no obligation to adopt any particular material, component, design factor or construction method**. This provides for a choice of compliance pathways. The Performance Requirements can be met using either a Performance Solution (Alternative Solution) or using a Deemed-to-Satisfy (DTS) Solution."*

You may hear otherwise (it's been a long standing misconception for this document - the Australian Building Codes Board went through several years of 'engineering the performance based mindset' for the building industry. It's a free download if you wish to see this and there are many resources on the webpage. Despite a very common misconception, the NCC does not require objective and quantitative requirements, and this is the law that government has applied to Victoria. The NCC provides for a range of *qualitative* requirements - <https://www.abcb.gov.au/Initiatives/All/Performance>

For now, I'm just explaining the law that government applies. It is important to know the actual laws that exist. A building surveyor has specified requirements in law; to apply the *specific regulations* that government has provided for building surveyors. Building surveyors are also given further provisions of law to ensure this is exactly what occurs and that nothing further occurs. There are specific provisions within the Building Act 1993 which prevent building surveyors from applying any *standard* (requirement) which is greater than given by regulation (this is stated in section 24(2) of the Building Act 1993). This is for jurisdictional purposes. Acts and regulations from parliament can be downloaded here - <http://www.legislation.vic.gov.au/>

The building industry has learned a lot over the past few decades, as does everyone, but, the fact is that the law did not require, and it still does not, any obligation of design factor under the NCC, and a building surveyor is *forced* through law to not impose any greater standard of compliance. Law is

available to access so people can download this and see what it says (all law is accessible - well, it should be, but there are many breaches by government on the *Rule of Law of Australia*, and many standards which are adopted into the NCC and into Building Regulation are not accessible without excessive payment - another terrible issue of the building industry, but I digress).

So let's look at a few provisions, followed by information relating to issues of compliance, jurisdiction, and what 'building compliance' is, and how it is split up into several areas of law - many of which do not form part of the Building Act 1993 (what building surveyors work with).

A provision many overlook is that the building regulations give a building surveyor either 10 or 15 days to make a decision on applications for permits. This is a very small timeframe to review complex constructions. There are several thousand provisions of regulation, expanding into several thousand more provisions, involving very technical science (*extremely* technical science) and other very complex matters. The RBS does not have power to reject permits on the basis that the RBS 'needs more time to assure safety or compliance' or something like that. The government did not give the RBS this sort of power, and, the law they made forbids a surveyor from trying to apply any higher standard. A time-limit applies in regulation, and regulations apply - there is a regulatory framework the RBS must follow, and the NCC gives 'minimum requirements' for construction - this is once again stated in the 'how it works section'. It's not a document which achieves safe buildings. It's a document providing 'minimum standards for construction'.

So, for practical purposes, due to the amount and complexity of regulations, what the regulations also provides for are specific provisions to allow *certification* of designs by *registered building practitioners*, and also *evidence of suitability* provisions - there are actually quite a few provisions of law specifically dealing with how a building surveyor can accept documentation as being compliant - they exist because of the practical impossibility to truly assess compliance for all matters in such a timeframe, aligning with the objectives of the Building Act 1993 (one of the main reasons that this act of law (the Building Act 1993) was made, was to 'speed up' permit approvals - there were previously issues in Australia about the length of time it took to get permission to build, so a brand new system of law was made by government to speed up that process).

Without certification, or *evidence of suitability* provisions of the NCC, the RBS would somehow have to overview boxes of documentation, containing technical information relating to many areas of science, including but not near limited to fire engineering, mechanical engineering, hydraulic engineering, electrical engineering, structural engineering, drainage engineering, thermal efficiency engineering, and this is not all - on top of many relevant scientific fields, there are subjective requirements such as planning requirements, there are insurance requirements, there are land/property requirements; the list goes on and on, and it grows each year with new regulations made - there are many, many topics and scientific fields implied into building regulation - and to assess all of this within 15 days without reliance on others is an impossibility for most projects.

The VBA for example took a few years to prepare reporting on this site... that is how long it really takes, with an entire team and the use of external assistance, to assess construction - the VBA have

not fully assessed compliance too, because again, that would probably take many more years in reality. Many building surveyors are actually breaching regulatory time limits trying to do as much as possible to try to assure as much safety and compliance as possible. However there is law, and persons should not breach law.

So this is why there are registered design building practitioners, and for most projects there will be multiple design building practitioners on the design team - the design practitioners are made and registered in law to assist with design work under regulation, and they are given allowance to certify designs, and specific provisions exist for building surveyors to accept their designs, information and certification. This was governments intended 'efficient system'...well... that was the plan...

What is happening recently is that the industry, including government, has realized that this so-called 'efficient' system is not working; government enacted law which does not achieve the objectives. Most of the industry is finally starting to accept this in recent times. Government and practitioner reporting has been out there for decades demonstrating failures of the system as a whole; however, recently there is an industry change occurring to finally accept this. It's a real change which is happening. The VBA have only for the past year started to, as they word, "drive cultural change" - as mentioned in the VBA's recent annual report. Basically since the VBA were made recently (around 2014); this is around the time I started to see wider acceptance of system failures. There are plans for years of changes to this industry. Many plans are unspecific as government is still unsure of what to do despite having had decades to figure it out. They are only now starting to admit they have failed.

As examples of reporting into the system; the Victorian Auditor General Office (VAGO) prepared multiple reports into the building industry (in 2011 and 2015) speaking of failures of the regulatory system as a whole - including authorities. The Victorian Ombudsman prepared reporting on failures too. This is government making these reports. I don't know if you know, but the VBA are new, before this was the Building Commission and Building Practitioners Board who had to be abolished in recent times because they were not meeting expectations and doing...other things they should not have done...the authorities of law recently changed for this industry - it is one of many indications of a system failure. It's something well known to the experts, and it's not a new issue, but government has been asleep at the wheel for decades for this industry and they have only recently started to take notice. You should see what the experts are telling them in recent reporting. The recent Shergold/Weir report is being used by most government departments right now as ideas of fixes to regulation.

There is somewhat recent trend for those who tend to not be aware of most regulation to think an RBS (relevant building surveyor) not only can, but should, review tens to hundreds of thousands of pages of documented technical and scientific information, corresponding with tens of thousands of laws, within 15 days, ensuring not a single matter is shown incorrect - and there has been a big push against the acceptance of certification and evidence of suitability despite the law which was made - and there is a trend, recently, to note an any form of issue in a building, and instantly draw a conclusion that a building surveyor has erred; many seem to think there is no possible other way for

issues to occur in buildings unless a building surveyor has made an error. Let's see if this conclusion can be drawn.

Many are unaware that building surveyors hold no authority to act for anything apart from specific portions of the Building Act 1993 and many are also unaware of the actual regulations. It's not that building surveyors don't want to step in and ensure total compliance and safety, it's that they are not permitted to act in certain areas. It's a matter of jurisdiction; this is something government has applied. There are a lot of areas of safety when dealing with buildings. I've come to learn there are a lot of *building defects* on the building, and I just wish to clarify that a *building defect*, by definition, relates to the quality of work from the builder, and not a departure of building regulation approval by a building surveyor - <https://www.consumer.vic.gov.au/housing/building-and-renovating/defects-delays-and-insolvency/disputes-defects-and-delays>

There are annoyingly many areas of regulation when dealing with buildings and building work - government, once again, are the people responsible for law - we building surveyors do not make law - government has made and split building compliance into many areas of law, and forbids persons from acting in certain areas (jurisdiction). There is for example the *Domestic Building Contracts Act* and there are VBA *standards and tolerances* which both apply for domestic building work (such as the subject building) - these are rules and requirements also relating to 'building compliance', but they are not building regulation and building surveyors are not permitted act for these issues.

It is very common, for example, that a system, say, an external wall cladding system, is a compliant system in documentation and physical form, however, a defect can still occur on site - the builder can work poorly on site and install the system incorrectly or damage the materials on site, turning the system into a failure - the majority of the time, if something like this were to occur, it is a building defect, not a breach of building regulation for the building surveyor. The cladding system is a compliant system, but a builder can practices in a manner that breaches the system - this is why there are separate regulations for these issues - the framework made for the Building Act 1993 does not cover total construction - this is what building surveyors work with (specific portions of it).

It might be interesting to know that government is only now, through a new bill passed this year, is introducing registration of tradespersons. Up until now, no scheme of registration for tradespersons existed. Many believe this to be a major reason why there are so many building defects on building sites. Most persons working on site are not registered persons - there is no registration of trades, yet.

A building surveyor is not part of the project team on site as a project manager, that is a different role of the industry for project managers. Some actually don't know this and think building surveyors are meant to be on site, sort of like the old 'clerk of works' role that existed many decades ago but disappeared in the industry. That's not what building surveyors do.

Until just last year, the nominated inspection points for a building surveyor under regulation were at 4 stages of the build. That's a very low amount of nominated inspection points. When dealing with cladding, the regulations provided for one inspection at the completion of framework (where there is no cladding), then, another at the completion of the project - so there are no inspections of the installation of cladding in the regulations (that is, until last year under the new regulations, and, the new regulations for the additional inspections only relate to a specific fire controls now, not to other matters of cladding - people are still going to face weatherproofing issues from cladding under the new regulations). The inspection points were before any cladding is installed on buildings, and then again after the completion of work, when cladding is typically covered up with render or painting. Government was going to bring in 2 other inspections for very big issues which persons constantly face, and decided not to go ahead due to complexity.

Again, I'm just explaining the regulations government make and recent changes to the industry. I think it's important.

So for this building, a lot of focus was given on the cladding and the fact it is *combustible*. The cladding which was approved by me for this building was a cladding system which the VBA have actually confirmed to be suitable. The VBA had issued building orders stating concerns of polystyrene cladding on the subject building a few years ago, as I've come to learn, however the orders stated that cladding I approved (QT cladding (a fire rated external wall system)), if found to be on the building, can remain (indicating suitability). The QT system includes a new material type known as *conpolcrete* - it's a blend of polystyrene and concrete. The VBA first noted a potential for combustible cladding, which was then investigated by the VBA. The VBA came to the same conclusion in that respect (that the cladding is suitable - the VBA have inspected the building, they made orders on the building, one of the orders was to remove the cladding, unless it was shown to be the system which I originally approved, in which case it was stated it could remain). The reason is via use of performance solutions and compliance with the NCC - again, which does not require a design factor. A scientific view of achieving the stated requirement was concluded.

It may also be of interest to note there was a registered fire safety engineer who reported on compliance, and I used this as part of the confirmation of compliance. As a basic the law was followed. Fire engineering is however a very complex science - it's physics - it's material sciences - there are many characteristics of materials - *combustibility* (a design factor) is one fire characteristic of materials, relating to a specific thing; in this case, a specified test procedure and classification under AS1530.1 given by the NCC. This is not the physical term 'combustible', the NCC gives a separate definition in the NCC as per the specified test procedure, not as per physics. There are many ways to resolve performance requirements of the NCC. Fire engineering is very complex.

The public might be hearing the current terminology of '*combustibility*' and how that 'is not permissible under the NCC'. If the NCC is read, or the above how it works webpage, you'll see that is an untrue statement ("there is no obligation to adopt a design factor"... (*combustibility* is a design factor)), and, after all the tragic events in recent times, it is actually still not a requirement of government to adopt any form of material, design factor or construction method under the NCC. In

fact, government have brought in a new method to permit combustible cladding via the new ministers guideline MG14. This was made to continue to permit combustible cladding - <https://www.vba.vic.gov.au/cladding/cladding-resources>

Now, another department of the VBA have claimed that as I drew the same conclusion as the VBA who placed orders on the building that the cladding is suitable, that I should be suspended for permitting that cladding. It was for example uncovered that the cladding which was approved was not installed on one of the blocks of the subject building; it looks like the builder or someone they contracted installed another form of cladding which was not approved onto one of the blocks. I did not permit that, and as I hope I have shown.

It also might interest you to know what an occupancy permit actually is - http://classic.austlii.edu.au/au/legis/vic/consol_act/ba199391/s46.html

Have a look at sub-section 2. This is important to help understand what these permits are. They are not evidence of compliance with building regulation. Many think if an occupancy permit is issued, it means there cannot be non-compliance. This is an interesting statement of law, is it not? Why would government put this statement in law? Basically, this is government disclaimer, and it is because of the system. Again, you need to know the regulations a bit, but basically, the Building Act 1993 is a set of *processes*. It's not a *law which achieves total safety, efficiency and compliance for buildings*. It's a processing system. This is why government put this statement in the act when they made the law - so people were aware that occupancy permits, when issued, do not evidence compliance - occupancy permits are another process of law. I think parliament knew when they made this act they knew that it would not achieve compliance for buildings

Also it is important to know that with the apartment buildings and at the completion stage, the Council also carry out inspection and a statement of compliance will be issued once they are satisfied that all works and materials are completed as per the planning permit approval. Planning permits are again another area of law which apply to buildings.

Also, I refer to another recent ABC story - <https://www.abc.net.au/news/2019-07-16/flammable-cladding-removal-fund-victorian-government/11311518>

There are hundreds of buildings identified with risk right now in Victoria (more than 500 buildings). I understand that the subject building is important, however I think it's also important to highlight the real issue, which is not 1 building or me. The issues of building compliance are not only state-wide, not only country wide, but actually worldwide.. and they are systemic issues. Building issues are normally not isolated incidents and issues do not only relate to cladding. Other buildings within Victoria were deemed to be in such a state that required occupiers to evacuate. A building was recently evacuated in Mordialloc, Victoria. Other buildings have caught fire. In other countries death has occurred. You might have heard of the tragic events of the Greenfell Tower of London, or the Lacrosse Building of Docklands, Melbourne. There have been many terrible incidents like this which result from the laws enacted by government. Until governments fix their systems, Australia will continue to have issues in the building world.

So, in summary;

- Regulations do not provide for total safety and compliance of buildings, they provide for *minimum requirements* for specific matters.
- *Building compliance* is not contained within building regulation alone, it is split into several areas of law.
- A building surveyor has very specific functions, working with specific matters of building regulation, and may not impose any requirement which is a higher standard than the *minimum requirements*.
- A building compliance issue is not indication of a building surveyors failure.
- Occupancy permits do not evidence compliance with all building regulation.
- Government has been aware of failures of the building permit system for decades and did not adequately address issues, and is only recently starting to do something about this.
- Relevant authorities (the previous Building Commission and Building Practitioners Board) have been abolished for not properly regulating the industry and a new authority is now made recently.
- The practitioner registration system for builders was extremely sub-par, with the authority providing either barriers which were far too low, or in some cases, completely failing to obtain relevant information during practitioner registration assessments, as noted in government reporting, allowing many builders not properly educated in relevant regulations to obtain registration.
- There are hundreds and hundreds of buildings designated with risk, involving many building surveyors, with more and more found each week.
- No other building surveyor seems to be suspended by the VBA, despite having done the same thing.
- Many other building surveyors have a far larger list of disciplinary decisions against them, just pointing this out.
- The entire building industry is undergoing a 'cultural change', and a regulatory change.